



690.0003

STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

450 N STREET, SACRAMENTO, CALIFORNIA
(PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0082)
TELEPHONE (916) 324-2642
FAX (916) 323-3387

JOHAN KLEHS
First District, Hayward

DEAN F. ANDAL
Second District, Stockton

CLAUDE PARRISH
Third District, Torrance

JOHN CHIANG
Fourth District, Los Angeles

KATHLEEN CONNELL
Controller, Sacramento

E. L. SORENSEN, JR.
Executive Director

November 18, 1999

Honorable Kenneth P. Hahn
Los Angeles County Assessor
500 W. Temple Street
Los Angeles, CA 90012-2770

Attention: Mr. Bob Olson

Dear Mr. Olson:

This is in response to your May 3, 1999, memorandum to the Board's Annotation Coordinator. You posed a few questions regarding proposed Annotation 690.0003 – Public Schools Exemption and suggested that we further clarify the annotation. As we informed you in our letter of June 25, 1999, we have decided to publish the annotation as written and to respond to your questions in this letter.

We have delayed this response until the end of the recent state legislative session as some legislation related to charter schools was under consideration. We will address your questions herein. In your letter, you state:

We are in agreement with this proposed change but would like further clarification on three points. What is the definition of a charter school? What kind of agreement do they have with the school district? We don't believe that nonprofit "public benefit" corporations are exempt. They must be either religious, hospital, or charitable in their articles of incorporation.

Briefly, a charter school is established pursuant to the California Education Code and is distinguished from other public schools. A charter school must be approved by either the local school district, the county board of education or the State Board of Education; upon approval, a charter is granted for the operation of the charter school. For the reasons stated below, it is our opinion that a charter school, including a charter school operating as or by a nonprofit public benefit corporation, is exempt from property tax as a "public school" pursuant to the California Constitution and Revenue and Taxation Code section 202, subd. (a)(3); Revenue and Taxation Code section 214 is not applicable to public schools.

LEGAL AUTHORITY

Charter schools

The Charter Schools Act of 1992 (Part 26.8 of the California Education Code) was enacted to provide teachers, parents, pupils and community members an opportunity to establish and maintain schools that operate independently from the existing school district structure, as a method to meet certain educational goals. (Education Code section 47601.) While the Act does not define "charter school", the statement of Legislative intent in section 47601 as to what is intended to be accomplished by such schools serves to identify and distinguish charter schools from other public schools.¹

California charter schools are required to participate in the statewide assessment test called the STAR (Standardized Testing and Reporting) program. Among other things, the Act also requires that a charter school be nonsectarian² in its programs, admission policies, employment practices, and all other operations, and prohibits the conversion of a private school to a charter school. Charter schools may not charge tuition and may not discriminate against any pupil on the basis of ethnicity, national origin, gender, or disability. The school district or county office of education that grants a charter petition has a duty to monitor the financial management of a charter school.

These standards and requirements are set out in the Education Code at section 47600 et seq.

Charter agreements

Local school districts have authority to grant a charter establishing a charter school. In organizing a charter school, the proponents of a charter school present a charter school petition to the local school district. If the district does not approve the petition, the proponents may appeal to the county board of education and to the State Board of Education.³

¹ Education Code section 47601 provides:

It is the intent of the Legislature, in enacting this part, to provide opportunities for teachers, parents, pupils, and community members to establish and maintain schools that operate independently from the existing school district structure, as a method to accomplish all of the following:

- (a) Improve pupil learning.
- (b) Increase learning opportunities for all pupils, with special emphasis on expanded learning experiences for pupils who are identified as academically low achieving.
- (c) Encourage the use of different and innovative teaching methods.
- (d) Create new professional opportunities for teachers, including the opportunity to be responsible for the learning program at the schoolsite.
- (e) Provide parents and pupils with expanded choices in the types of educational opportunities that are available within the public school system.
- (f) Hold the schools established under this part accountable for meeting measurable pupil outcomes, and provide the schools with a method to change from rule-based to performance-based accountability systems.
- (g) Provide vigorous competition within the public school system to stimulate continual improvements in all public schools.

² In some other states, charters may be granted to sectarian schools.

³ See Education Code section 47605, subd. (j) and Title 5, California Code of Regulations, section 11967.

A charter may be supplemented by other documents that describe many aspects of school operation and may be comprehensive. We are not aware of specific supplemental document requirements in this regard.

For property tax assessment purposes, it is probably not necessary for the county assessor's office to evaluate charters. That responsibility, as well as the authority and responsibility to revoke charters, is held by other agencies. As discussed below, it is our opinion that charter schools are exempt from property tax; the question for the county assessor is then: is the charter operative for the applicable lien date?

Basis of property tax exemption

The California Constitution provides that all property is subject to tax unless otherwise provided by the state constitution or the laws of the United States. (California Constitution, article XIII, section 1.) Article XIII, section 3, subd. (d) exempts from property taxation

"Property used for libraries and museums that are free and open to the public and property used exclusively for public schools, community colleges, state colleges, and state universities." (Emphasis added.)

This constitutional exemption is codified in the Revenue and Taxation Code, section 202, subd. (a)(3) which provides:

(a) The exemption of the following property is as specified in subdivisions (a), (b), (d), and (h) of Section 3 of Article XIII of the Constitution, except as otherwise provided in subdivision (a) of Section 11 thereof:

* * *

(3) Property used exclusively for public schools, community colleges, state colleges, and state universities, including the University of California.

The Charter Schools Act provides that charter schools are public schools. Education Code section 47615 provides:

(a) The Legislature finds and declares all of the following:

(1) Charter schools are part of the Public School System, as defined in Article IX of the California Constitution.

(2) Charter schools are under the jurisdiction of the Public School System and the exclusive control of the officers of the public schools, as provided in this part.

(3) Charter schools shall be entitled to full and fair funding, as provided in this part.

(b) This part shall be liberally construed to effectuate the findings and declarations set forth in this section.

Thus, the applicable exemption for property of a charter school is the public schools exemption.

AB 544/Stats. 1998, Ch. 34 added Education Code section 47604, which provides:

(a) Charter schools may elect to operate as, or be operated by, a nonprofit public benefit corporation, formed and organized pursuant to the Nonprofit Public Benefit Corporation Law (Part 2 (commencing with Section 5110) of Division 2 of Title 1) of the Corporations Code).

(b) The governing board of a school district that grants a charter for the establishment of a charter school formed and organized pursuant to this section shall be entitled to a single representative on the board of directors of the nonprofit public benefit corporation.

(c) It is the intent of the Legislature that an authority that grants a charter to a charter school to be operated by, or as, a nonprofit public benefit corporation shall not be liable for the debts or obligations of the charter school.

Thus, a charter school may be incorporated as a nonprofit public benefit corporation. Still, a charter school, so incorporated, is a public school, and the applicable exemption remains the public schools exemption.

Some nonprofit public benefit corporations are exempt from property taxation pursuant to Revenue and Taxation Code section 214. However, the public schools exemption differs from the welfare exemption codified in Revenue and Taxation Code section 214; subd. (a) of that section provides an exemption for:

Property used exclusively for religious, hospital, scientific, or charitable purposes owned and operated by community chests, funds, foundations or corporations organized and operated for religious, hospital, scientific, or charitable purposes is exempt from taxation . . .

Subd. (b) of section 214 provides an exemption for schools which are not public schools. That subdivision provides:

Property used exclusively for school purposes of less than collegiate grade and owned and operated by religious, hospital, or charitable funds, foundations, or corporations, which property and funds, foundations, or corporations meet all of the requirements of subdivision (a), shall be

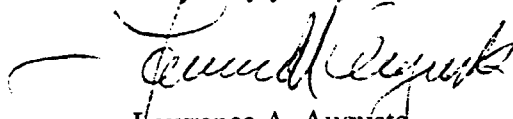
November 18, 1999

deemed to be within the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the California Constitution and this section.

Therefore, the property tax exemption for properties of charter schools differs from the property tax exemption for properties of private schools eligible for exemption under section 214. Section 214 is not applicable to public schools.

The views expressed in this letter are only advisory in nature; they represent the analysis of the legal staff of the Board based on present law and the facts set forth herein, and are not binding on any person or public entity.

Very truly yours,



Lawrence A. Augusta
Assistant Chief Counsel

LAA:jd

h:/property/precednt/genexemp/1999/13laa

cc: Mr. Richard C. Johnson – MIC:63
Mr. David Gau – MIC:64
Mr. Charles Knudsen – MIC:64
Ms. Jennifer Willis – MIC:70

NOV 19 1999



STATE BOARD OF EQUALIZATION

LEGAL DIVISION (MIC:82)

1000 N STREET, SACRAMENTO, CALIFORNIA

BOX 942879, SACRAMENTO, CALIFORNIA 94279-0082)

TELEPHONE (916) 324-2642

FAX (916) 323-3387

JOHAN KLEHS
First District, Hayward

DEAN F. ANDAL
Second District, Stockton

ERNEST J. DRONENBURG, JR.
Third District, San Diego

KATHLEEN CONNELL
Controller, Sacramento

JOHN CHIANG
Acting Member
Fourth District, Los Angeles

E. L. SORENSEN, JR.
Executive Director

July 15, 1998

Governing Board Member
Charter School

Re: Property Tax Exemption

Dear Ms. :

This is in reply to your May 5, 1998 letter to Ms. Kristine Cazadd in which you request a written opinion on whether the property of the Fe Charter School is exempt from property tax under the public schools exemption. As explained below, we conclude that the public schools exemption will be available to property used exclusively by the Charter School for public school/charter school purposes on January 1, 1999 pursuant to Assembly Bill 544 (Stats. 1998, Ch. 34) (AB 544), approved by the Governor on May 7, 1998, filed with the Secretary of State on May 8, 1998, and effective January 1, 1999. Our conclusion assumes, of course, that your agreement with the Unified School District is valid and in effect¹ and that the school property is used exclusively for public school/charter school purposes. Please note, however, that the public schools exemption is administered solely by the County Assessor; you should consult with that office to find out if the Assessor is in agreement with our conclusion.

You have submitted the following documents:

Amended Agreement between Unified School District and
Charter School, revised and signed on March 17, 1998;

Articles of Incorporation of Charter School, Inc., filed
February 13, 1996; and

Bylaws of Charter School.

¹ As our expertise is in the area of taxation and not education, we have not reviewed your documents as to compliance with the Education Code. We assume that the Unified School District has made that review. We assume also the judicial validation of the terms and conditions of the agreement (Amended Agreement, paragraph II.)

The amended agreement is made between Unified School District and Charter School, a nonprofit public benefit corporation, and provides in its recitals that the Charter School was organized under the authority of the California Education Code section 47600 et seq., approved by the School District Board of Education and acknowledged by the State Board of Education on October 13, 1995.

The Charter Schools Act of 1992 (California Education Code sections 47600-47616) provides opportunities to establish and maintain schools "that operate independently from the existing school district structure, as a method to accomplish" specific purposes.² Assembly Bill 544 amends and adds certain provisions to the Education Code; sections 3 and 16 of AB 544 add Education Code sections 47604 and 47615, respectively. These sections are relevant to the issue of the public schools exemption.

First, as background, we note that the public schools exemption is set forth in section 3, subdivision (d) of Article XIII of the California Constitution which provides:

[The following are exempt from property taxation:]

Property used for libraries and museums that are free and open to the public and property used exclusively for public schools, community colleges, state colleges, and state universities.

Revenue and Taxation Code section 202, subdivision (a)(3) codifies the above constitutional exemption and provides for a property tax exemption for property used exclusively for public schools.

Newly enacted Education Code section 47604, subdivision (a) provides:

Charter schools may elect to operate as, or be operated by, a nonprofit public benefit corporation, formed and organized pursuant to the Nonprofit Public Benefit Corporation Law (Part 2 (commencing with Section 5110) of Division 2 of Title 1) of the Corporations Code.

Newly enacted Education Code section 47615 provides:

(a) The Legislature finds and declares all of the following:

² See Education Code section 47601.

July 15, 1998

(1) Charter schools are part of the Public School System, as defined in Article IX of the California Constitution.³

(2) Charter schools are under the jurisdiction of the Public School System and the exclusive control of the officers of the public schools, as provided in this part.

(3) Charter schools shall be entitled to full and fair funding, as provided in this part.

(b) This part shall be liberally construed to effectuate the findings and declarations set forth in this section.

Based on Education Code sections 47604 and 47615, we conclude that the

Charter School will be a "public school" as that term is used in the public schools exemption provisions cited above, and that the public schools exemption will be available to property used exclusively by the Charter School for public school/charter school purposes starting January 1, 1999, if the assumptions made as to the agreement with the Unified School District exist and if the agreement is in effect.

The question of whether charter schools incorporated as nonprofit corporations are eligible for the public schools exemption prior to the effective date of AB 544 is a separate question. As you have not asked that specific question, we do not address it herein except to note that there is a recent Attorney General Opinion which concludes that "a charter school may not be formed as a separate legal entity from the school district that granted the charter." 81 Ops.Cal.Atty.Gen. 140, 144 (April 2, 1998). Since a corporation is generally regarded as a distinct legal entity, a question is raised as to whether a nonprofit corporation can also be considered a "public school" or part of the public school system prior to the effective date of AB 544. Based on the Attorney General Opinion cited above, public school status and corporate status cannot be concurrent, hence, the need for AB 544.

The views expressed in this letter are only advisory in nature; they represent the analysis of the legal staff of the Board based on present law and the facts set forth herein, and are not binding on any person or public entity.

³ Section 6 of Article IX provides that "The Public School System shall include all kindergarten schools, elementary schools, secondary schools, technical schools, and State colleges, established in accordance with law and, in addition, the school districts and the other agencies authorized to maintain them."

July 15, 1998

Our intention is to provide timely, courteous, and helpful responses to inquiries such as yours. Suggestions that help us to accomplish this goal are appreciated.

Sincerely,

A handwritten signature in cursive script, appearing to read "Janet Saunders".

Janet Saunders
Tax Counsel

JS:cl

h:\property\precednt\genexemp\1998\98009.js

cc: Honorable
County Assessor

Mr. Richard C. Johnson (MIC:63)
Mr. Rudy Bischof (MIC:64)
Mr. David J. Gau (MIC:64)
Ms. Jennifer L. Willis (MIC:70)